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21 UNITED STATES DISTRICT COURT  
22 SOUTHERN DISTRICT OF CALIFORNIA

23 **ViaSat, Inc.,**

24 *a Delaware corporation,*

25 Plaintiff

26 and Counter Defendant,

27 v.

28 **Acacia Communications, Inc.,**

*a Delaware corporation,*

Defendant

and Counter Claimant

Case No. 3:16-cv-00463-BEN-JMA

**ACACIA COMMUNICATIONS,  
INC.'S MOTION TO FILE UNDER  
SEAL DOCUMENTS ASSOCIATED  
WITH ITS REPLY IN SUPPORT OF  
ACACIA'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
REGARDING DAMAGES**

Judge: Hon. Roger T. Benitez

Mag. Judge: Hon. Jan M. Adler

Date: February 20, 2018

Time: 10:30 a.m.

Courtroom: 5A

Under Federal Rule of Civil Procedure 26(c), Local Rule 79.2(c), ECF Administrative Policies and Procedures 2(j), the Stipulated Protective Order § 1 (D.I. 29), and Magistrate Judge Adler’s Chamber Rules at 3, defendant and counter claimant Acacia Communications, Inc. (“Acacia”) submits this motion to file under seal portions of its Reply in Support of Acacia Communications, Inc.’s Motion for Summary Judgment Regarding Damages (“Acacia’s Reply”).

### **ARGUMENT**

Certain limited portions of Acacia’s Reply contain confidential information that one or both of the parties have designated as Confidential or Highly Confidential – Attorneys’ Eyes Only under the Stipulated Protective Order (D.I. 29), disclosure of which would harm the competitive standing of the parties and could be used to the parties’ competitive disadvantage outside of this case.

Acacia seeks to seal the following document:

- a. Portions of Acacia’s Reply, which contains information that ViaSat and Acacia have designated as Highly Confidential – Attorneys’ Eyes Only. These portions contain confidential business and financial information of both ViaSat and Acacia regarding product sales, royalty and other payments, contractual obligations, and the value of the technology and products at issue in this case.

Acacia will electronically file a public version of Acacia’s Reply with the confidential information redacted. Therefore, this request is narrowly tailored to protect only the information that is confidential.

While the public generally enjoys the right of access to court records, the public’s right to access to court records “is not absolute,” and documents are properly filed under seal where disclosure would harm a party by forcing it to disclose trade secrets or other valuable confidential proprietary business information. *See, e.g., Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569-70 (9th Cir. 2008).

1 “Where a party shows that its documents contain sources of business  
2 information that might harm its competitive standing, the need for public access to the  
3 records is lessened.” *Algarin v. Maybelline, LLC*, No. 12-3000, 2014 WL690410, at \*3  
4 (S.D. Cal. Feb. 21, 2014). Courts must ensure that their records are not used “as  
5 sources of business information that might harm a litigant’s competitive standing.”  
6 *Nixon*, 435 U.S. at 598; *see also Bauer Bros. LLC v. Nike, Inc.*, No. 09500, 2012  
7 WL1899838, at \*3-4 (S.D. Cal. May 24, 2012) (granting motion to seal non-public  
8 financial data); *Davis v. Soc. Serv. Coordinators, Inc.*, No. 10-023 72, 2012 WL 1940677, at  
9 \*3 (E.D. Cal. May 29, 2012) (noting that “[g]ood cause to seal is generally found where  
10 the disclosure of proprietary information could cause a party competitive injury”).

11 Good cause to file under seal exists because the information Acacia seeks to seal  
12 has been identified as confidential by Acacia, ViaSat, and third parties. Publicly filing  
13 the information would prejudice Acacia, ViaSat, and third parties by revealing technical  
14 and financial information that could be used for competitive advantage outside of this  
15 case. Therefore, there is good cause to seal this information.

### 16 CONCLUSION

17 For the foregoing reasons, Acacia respectfully requests that the Court seal the  
18 portions of Acacia’s Reply. A Proposed Order will be emailed to  
19 efile\_benitez@casd.uscourts.gov and efile\_adler@casd.uscourts.gov.

20  
21 Date: February 13, 2018

Respectfully Submitted,

22 WOLF, GREENFIELD & SACKS, P.C.

23  
24 By: s/Michael A. Albert

Michael A. Albert

25 Hunter D. Keeton

26 Stuart V. C. Duncan Smith

27 Attorneys for Defendant and Counter  
28 Claimant Acacia Communications, Inc.

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**CERTIFICATE OF SERVICE**

I certify that today I served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that am causing the foregoing document to be served by electronic means via email upon counsel for ViaSat, Inc., per the agreement of counsel.

Date: February 13, 2018 s/Michael A. Albert  
Michael A. Albert